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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
) No. 10-0508
DEPARTMENT OF TRANSPORTATION)
of the STATE OF ILLINOIS for)
and in behalf of the PEOPLE)
OF THE STATE OF ILLINOIS)
-VS-)
COMMONWEALTH EDISON COMPANY,)
and unknown owners)
)
Petition for approval of the)
taking or damaging of certain)
properties owned by a public)
utility in Du Page County,)
Illinois, by exercising the)
right of eminent domain)

Chicago, Illinois

October 19, 2010

Met, pursuant to adjournment, at
1:30 o'clock p.m.

BEFORE:

MR. JOHN RILEY,
Administrative Law Judge

1 APPEARANCES:

2 MR. DOUGLAS G. FELDER
3 203 North La Salle Street
4 Suite 2300
5 Chicago, Illinois
6 appearing for the
7 Illinois Department of
8 Transportation

9 MR. MARK L. GOLDSTEIN
10 3019 Province Circle
11 Mundelein, Illinois
12 appearing for Commonwealth
13 Edison Company

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I N D E X

WITNESSES DIRECT CROSS REDIRECT RECROSS EXMNR.

ERSKINE					
KLYCE	29	35			42
		43	43	45	45
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E X H I B I T S

PETITIONER'S FOR IDENTIFICATION IN EVIDENCE.

Nos. 1	29	50
2	29	50

RESPONDENT'S FOR IDENTIFICATION IN EVIDENCE.

No. 1	29
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2 JUDGE RILEY: Pursuant to the direction of the
3 Illinois Commerce Commission, I call Docket 10-0508.
4 This is a petition by the Department of
5 Transportation of the State of Illinois for and on
6 behalf of the People of the State of Illinois versus
7 Commonwealth Edison Company and unknown others for
8 approval of the taking or damaging of certain
9 properties owned by a public utility in Du Page
10 County, Illinois, by exercising the right of eminent
11 domain.

12 Counsel for IDOT, would you enter your
13 appearance, please.

14 MR. FELDER: Yes. Thank you, Judge. Good
15 afternoon. My name is Doug Felder, F-e-l-d-e-r. I
16 represent the petitioner, Department of
17 Transportation, 203 North La Salle Street, Suite
18 2300, Chicago, 60601; Phone No. 312-634-3509.

19 JUDGE RILEY: Thank you.

20 Mr. Goldstein for Com Ed.

21 MR. GOLDSTEIN: Yes. On behalf of Commonwealth
22 Edison Company, Mark L. Goldstein, 3019 Province

1 Circle, Mundelein, Illinois, 60060; Phone No.

2 847-949-1340.

3 JUDGE RILEY: Thank you.

4 At this stage of the proceeding we were
5 scheduled to begin an evidentiary hearing. Are the
6 parties ready to proceed?

7 MR. GOLDSTEIN: Yes, sir.

8 MR. FELDER: Yes.

9 JUDGE RILEY: And, Mr. Felder, I'm going to turn
10 it over to you then. Did you want to make an
11 opening statement of any kind?

12 MR. FELDER: Just a very brief one, if I may.

13 JUDGE RILEY: Certainly.

14 OPENING STATEMENT

15 BY

16 MR. FELDER:

17 Your Honor, we are here to request to
18 put on evidence regarding the department's request
19 for a petition seeking approval to acquire by use of
20 its eminent domain power certain property that is
21 owned by or in which Com Ed has an interest located
22 in Du Page County, Illinois.

1 The property that is being sought is
2 needed for the improvement project the department is
3 undertaking at Illinois Route 56, or otherwise known
4 as "Butterfield," in Du Page County, and the
5 department needs to acquire the property at this
6 time in order to move forward with letting and
7 constructing its proposed improvement project.

8 We have one witness to call,
9 Mr. Erskine Klyce, who's an engineer for the
10 Department of Transportation, who will be able to
11 testify regarding the need for the property, and the
12 inability of the department to acquire the property
13 through negotiations, and at this time the need to
14 acquire by using the eminent domain powers that the
15 state possesses at this time.

16 I also believe that he'll establish
17 that the department has attempted to, but unable to,
18 acquire the property that it needs through voluntary
19 negotiations, primarily because, as I understand it,
20 there's certain conveyance documents that Com Ed and
21 the department could not agree on the content of
22 that relate to the clearance of title in that the

1 department needs to be able to proceed in eminent
2 domain proceedings where it published against
3 unknown owners and others to clear up title matters
4 that couldn't be cleared up in a voluntary
5 conveyance.

6 It's also my understanding that Com Ed
7 does not have any objection to the acquisition of
8 its property, nor does it contest the amount that's
9 being sought -- that's being offered for the
10 property that's sought at this time.

11 And with that preliminary statement,
12 your Honor, I would like to call --

13 MR. GOLDSTEIN: May I have a brief response?

14 JUDGE RILEY: Yes.

15 MR. FELDER: That completes --

16 JUDGE RILEY: Thank you.

17 Mr. Goldstein.

18 OPENING STATEMENT

19 BY

20 MR. GOLDSTEIN:

21 Yes. Thank you, Judge. This is a
22 contested matter. You are going to have to issue a

1 proposed order.

2 Mr. Felder is correct that there is an
3 agreed upon price for the parcel involved in this
4 eminent domain.

5 Com Ed has signed off on a permanent
6 easement that has been provided to IDOT that is
7 going to be the exhibit that we are going to provide
8 for the record in this matter.

9 Com Ed is willing to sign off on
10 virtually all the documents that IDOT may need in
11 order to complete the conveyance, save for an
12 Affidavit of Title.

13 This has been an ongoing matter over
14 the last several months between Com Ed and IDOT and
15 has not been resolved, and that is the reason that
16 this is a contested matter.

17 That concludes my opening statement.

18 JUDGE RILEY: Okay. Thank you. And at this
19 time, Mr. Felder, you are free to call your first
20 witness.

21 MR. FELDER: Thank you, Judge. The
22 department/petitioner would call Mr. Erskine Klyce.

1 (Witness sworn.)

2 Please, proceed.

3 (Whereupon, Petitioner's
4 Exhibit Nos. 1 & 2 were
5 marked for
6 identification.)

7 (Whereupon, Respondent's
8 Exhibit No. 1 was marked
9 for identification.)

10 ERSKINE KLYCE, P.E.,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY

15 MR. FELDER:

16 Q. Mr. Klyce, would you please state your name
17 and spell it for the court reporter.

18 A. My name is Erskine Klyce. First name is
19 E-r-s-k-i-n-e, last name K-l-y-c-e.

20 Q. And, Mr. Klyce, are you currently employed
21 by The Department of Transportation?

22 A. Yes.

1 Q. Can you briefly describe the capacity in
2 which you are employed?

3 A. For the Department of Transportation, I
4 serve as a condemnation engineer in the Bureau of
5 Land Acquisition.

6 Q. And what do you do? What are your duties
7 and responsibilities as a condemnation engineer for
8 the department?

9 A. I insure that the department and the private
10 parties that are involved in acquiring additional
11 land for roadway improvements are compensated
12 accurately and fairly.

13 Q. And you are familiar with the department's
14 improvement project that is currently being proposed
15 for Illinois Route 56, Butterfield Road, in Du Page
16 County?

17 A. Correct.

18 Q. And are you familiar generally with the
19 property that's being sought in this proceeding?

20 A. Yes.

21 Q. Is it your understanding that the department
22 has attempted, but been unable, to acquire the

1 property from Com Ed through voluntary negotiations
2 at this time?

3 A. Correct.

4 Q. Now let me show you, if I may, your Honor,
5 what's Petitioner's Exhibit No. 1.

6 JUDGE RILEY: Certainly.

7 MR. FELDER: Q. We have three copies marked, one
8 for the court, one for the witness, and one for
9 counsel, if he would like it.

10 Let me show you Department Exhibit No.
11 1, which is an 11 by 17 document that depicts --
12 could you describe what it depicts, please.

13 A. Yes. It is a plat of highways that shows
14 the area in question today that is owned by Com Ed.
15 The area in blue is the area sought for permanent
16 easement and the area that's highlighted in yellow
17 is the total holding where the property line that
18 Com Ed has.

19 Q. And there are yellow and blue markings on
20 the Petitioner's Exhibit 1, correct?

21 A. Yes, that's correct.

22 Q. And did you put that marking there?

1 Let me show you what's been marked as
2 Petitioner's Exhibit 2 for identification and ask
3 you if you recognize that document.

4 A. I do.

5 Q. It's entitled "FY 2011-2016 Highway
6 Improvement Program" at the top; is that correct?

7 A. That's correct.

8 Q. Can you briefly describe what Petitioner's
9 Exhibit 2 depicts.

10 A. This indicates some of the jobs that are in
11 the FY 2011-2016 Highway Improvement Program,
12 specifically today are highlighted in the yellow
13 section Illinois 56 west of Illinois 59 to east of
14 Winfield Road.

15 Q. So what I have marked as -- or what's been
16 marked as Department Exhibit -- Petitioner's Exhibit
17 2 is a page out of the Highway Improvement Program
18 showing the schedule for the project that you have
19 described on Illinois 56.

20 A. Yes. It's just one page of many.

21 Q. And is the project on Illinois 56 in Du Page
22 County set for a letting schedule at this time?

1 A. Yes, it is.

2 Q. And what's the letting schedule for this
3 project at this time?

4 A. Currently it's set for January 21, 2011.

5 Q. And in order to meet that letting, does the
6 department have to acquire all the interests in
7 property that it needs before it can let the
8 contracts for this improvement project?

9 A. That's correct.

10 Q. And that would include the property that's
11 the subject of this action that's owned by
12 Commonwealth Edison?

13 A. Correct.

14 Q. In order to do that, does the department
15 need to obtain -- first obtain an order from the
16 Illinois Commerce Commission approving the
17 acquisition or the taking of Com Ed property and
18 then file an eminent domain action and proceed to
19 and conclude a quick take proceeding in the Circuit
20 Court of Du Page County before it can let this
21 project?

22 A. Yes.

1 Q. Is the property, therefore, needed at this
2 time by the department to construct the project?

3 A. Yes.

4 Q. Now if the project is delayed -- or the
5 letting schedule is delayed, will there be any
6 result or consequence to the department or the
7 motoring public?

8 A. It's a potential, yes.

9 Q. And what would potentially -- what potential
10 consequences could result?

11 A. We could jeopardize the federal funding of
12 the job. We could jeopardize cost and we could also
13 generally potentially miss this job altogether.

14 MR. FELDER: Thank you. I have no further direct
15 examination.

16 MR. GOLDSTEIN: I have cross.

17 JUDGE RILEY: Go ahead, Mr. Goldstein.

18 CROSS EXAMINATION

19 BY

20 MR. GOLDSTEIN:

21 Q. Let's start with the letting that you said
22 is going to be on January 21, 2011. Is there some

1 kind of document that memorializes that fact?

2 A. We have our internal district one letting
3 schedule that currently indicates the current
4 letting of January 21, 2011.

5 Q. And what does that really mean? If the
6 letting would be March or April of 2011, what
7 difference would that make?

8 A. The advantage of an early or a mid-winter
9 early in the year January letting allows some of the
10 preliminary work to occur. Utility relocations
11 typically need to occur before the main roadway
12 widening and reconstruction begins.

13 Other activities that could begin ahead
14 of time would be storm sewer work, stuff that does
15 not impact closing lanes of traffic to the motoring
16 public before April 1st.

17 Q. And that kind of preliminary work would be
18 done during the winter?

19 A. It has the potential and the advantage --
20 that's really up to the contractor who's awarded the
21 contract to what is most advantageous to him.

22 Q. Now looking at the schedule for the work to

1 be done on Butterfield Road, which is Petitioner's
2 Exhibit 2, it shows dates of 2012 to 2016.

3 A. Yes.

4 Q. Do I understand correctly that the actual
5 additional lanes and bridge replacement work would
6 begin sometime in 2012?

7 A. No. On the Highway Improvement Program,
8 Exhibit No. 2, those years are funding -- or fiscal
9 years that the job is currently scheduled to be paid
10 out.

11 Q. So it would begin say in July of 2011. When
12 would the actual work be started?

13 A. Well, as soon as we can acquire all of the
14 parcels on this project, we could begin utility
15 relocations, which is not subject to the letting,
16 and to getting -- receiving the contractor's bid.

17 Q. Now did you have any part in the
18 negotiations with Commonwealth Edison for permanent
19 easement that you acquired from Com Ed?

20 A. In the negotiations, no.

21 Q. And are you aware that Com Ed has actually
22 signed off on a permanent easement to IDOT for the

1 parcel that's part of this condemnation proceeding?

2 A. My understanding is there's many areas that
3 Commonwealth Edison and IDOT agree upon. The main
4 issue seems to be a title issue.

5 Q. Let me show you what hopefully some time
6 will be marked as Com Ed Exhibit No. 1.

7 JUDGE RILEY: Let the record it already has.

8 MR. GOLDSTEIN: Thank you.

9 MR. GOLDSTEIN: Q. You have a copy of this
10 Mr. Klyce. Have you seen that document before?

11 A. I have seen this document before.

12 Q. All right. And you are aware that IDOT has
13 had that document in its possession for the past
14 five months, are you not?

15 A. I'm going to have to trust you on that
16 timetable.

17 Q. You do not know that. Okay.

18 And that document that I'm referring to
19 is a permanent easement that grants IDOT the right
20 to the parcel for a specified and agreed upon price,
21 does it not?

22 A. Skimming it briefly, yes, it does appear to

1 be a dollar amount that we have discussed.

2 Q. And since you did not take part -- did you
3 take part in any negotiations with Com Ed for the
4 parcel in question in this proceeding?

5 A. No.

6 Q. Now once this Commission issues an order
7 approving the condemnation, the next step for IDOT
8 is to take this matter to the court in Du Page
9 County; is that right?

10 A. That's my understanding.

11 Q. And is it your understanding that from when
12 IDOT does that that -- what does the court actually
13 do? Do you know what the court actually does with
14 respect to the condemnation of a property?

15 MR. FELDER: Objection to relevancy.

16 JUDGE RILEY: Mr. Goldstein, response.

17 MR. GOLDSTEIN: It's relevant to the entire
18 proceeding.

19 JUDGE RILEY: I need all the information I can
20 get, counsel.

21 Please answer if you can.

22 THE WITNESS: Would you mind repeating the

1 question.

2 MR. GOLDSTEIN: Read it back, please.

3 (Question read by
4 reporter.)

5 MR. FELDER: Object also to the form of the
6 question and it calls for a legal conclusion of this
7 witness.

8 JUDGE RILEY: Response.

9 MR. GOLDSTEIN: I'm only asking him as a layman
10 what his understanding is. He's already talked
11 about the matter of going to the circuit court.

12 JUDGE RILEY: So what you are asking does he know
13 the procedure of the court?

14 MR. GOLDSTEIN: Yes.

15 JUDGE RILEY: Counsel, excuse me.

16 Can you answer the question?

17 THE WITNESS: Not as well as these two gentlemen
18 or yourself. I can attempt to.

19 JUDGE RILEY: Okay. Go ahead.

20 THE WITNESS: It will go to Du Page County for a
21 quick take. Both sides will have an opportunity to
22 present any type of evidence, whether it's valuation

1 or need.

2 The judge at the time will review and
3 determine what the preliminary just compensation
4 will need to be for the department to be able to
5 acquire title.

6 Beyond that, I guess I couldn't
7 pontificate further, but I don't know if that's the
8 point of Mr. Goldstein --

9 MR. GOLDSTEIN: Q. And, in fact, as I have
10 pointed out to you with respect to Com Ed Exhibit 1,
11 Com Ed has granted a permanent easement and has
12 agreed to the compensation with IDOT.

13 A. I would agree with that statement, but --

14 Q. And is it your understanding that the only
15 open issue is whether Com Ed will sign off on an
16 Affidavit of Title?

17 A. That and potentially other conveyance
18 documents.

19 Q. Are you aware of any actions taken by Com Ed
20 wherein Com Ed has refused to sign off on any of the
21 other documents other than the Affidavit of Title?

22 A. That's hard for me to say as I have not

1 really been involved in that arena.

2 Q. Very good.

3 MR. GOLDSTEIN: Nothing else.

4 EXAMINATION

5 BY

6 JUDGE RILEY:

7 Q. I just have couple of questions of my own,
8 Mr. Glyce. What do you see as the issue in this
9 matter? There's no issue as to the acquisition of
10 the land or the compensation involved. What is the
11 dispute about?

12 A. Simply on whether or not title can be
13 cleared to the extent that we require as, and the
14 AG's office requires, and our own chief counsel
15 requires, I believe. And it's hard for me to speak
16 for Com Ed, but they potentially don't agree with
17 how we are trying to clear everyone and the
18 continuum of the universe saying they don't have
19 anybody else that has any holding to the land that
20 Com Ed previously owned before they turned it over
21 to us.

22 I'm not sure if that's -- I'm not sure

1 I explained that correctly. I believe Mr. Felder
2 can.

3 JUDGE RILEY: Well --

4 MR. GOLDSTEIN: May I ask a follow-up question,
5 Judge, before we get to redirect.

6 JUDGE RILEY: Go ahead.

7 CROSS EXAMINATION

8 BY

9 MR. GOLDSTEIN:

10 Q. Now one of the other documents that Com Ed
11 could sign off on is something called an "Affidavit
12 of Ownership." Are you familiar with that document?

13 A. I am not.

14 MR. GOLDSTEIN: All right. I have nothing else.

15 JUDGE RILEY: All right. Did you have any
16 redirect you want to follow up with?

17 MR. FELDER: Yes, if I could just ask a question
18 or two.

19 REDIRECT EXAMINATION

20 BY

21 MR. FELDER:

22 Q. Mr. Klyce, are you familiar with a document

1 that's used in negotiations that's referred to as an
2 Affidavit of Title?

3 A. To an extent, I am.

4 Q. Do you have any understanding whether the
5 Affidavit of Title makes representations or
6 warrantees of title in general, and it's
7 specifically with regard to the Com Ed parcel
8 involved in this acquisition that makes warrantees
9 with regard to the ownership of the title that
10 Commonwealth Edison is unwilling to sign?

11 MR. GOLDSTEIN: I'm going to object to the
12 question. This definitely calls for a legal
13 conclusion on behalf of Mr. Klyce. That's my
14 objection.

15 MR. FELDER: I'm following upon a matter that
16 after we got into it I was trying to get some
17 clarification for the court.

18 JUDGE RILEY: Again, I need all the clarification
19 I can get if you can answer the question.

20 THE WITNESS: If the question is is Com Ed and
21 IDOT in dispute over the Affidavit of Title --

22 MR. FELDER: Q. Essentially.

1 A. -- essentially that is a reasonable
2 summation. I am aware of that.

3 MR. FELDER: Okay. I don't have any other
4 questions.

5 MR. GOLDSTEIN: I'll follow-up again.

6 RECROSS EXAMINATION

7 BY

8 MR. GOLDSTEIN:

9 Q. Do you know what the purpose of the
10 Affidavit of Title is?

11 A. I don't think that I can answer that
12 responsibly.

13 MR. GOLDSTEIN: I have nothing else.

14 EXAMINATION

15 BY

16 JUDGE RILEY:

17 Q. When you say there is a dispute over the
18 Affidavit of Title, is it as to whether Com Ed
19 actually owns the property or --

20 A. No. It's just whether or not that they --
21 that there's no other property owners that could
22 claim that they owned the Com Ed property.

1 Q. In other words, it's not -- IDOT is not 100
2 percent satisfied that the title is free and clear
3 in Com Ed's name?

4 A. That's reasonable.

5 JUDGE RILEY: Okay. All right. Is that where we
6 are?

7 MR. GOLDSTEIN: Let me follow-up again.

8 RECROSS EXAMINATION

9 BY

10 MR. GOLDSTEIN:

11 Q. Wouldn't it be possible then for IDOT to
12 obtain a title commitment and ultimately a title
13 policy from a title company which would show whether
14 there are unknown owners or other entities claiming
15 any type of ownership in the parcel that's in
16 question in this proceeding?

17 MR. FELDER: Objection; calls for a legal
18 conclusion.

19 JUDGE RILEY: Also sounds like a settlement
20 negotiation.

21 MR. FELDER: Right.

22 JUDGE RILEY: I'm not sure where you are going

1 with that question, Mr. Goldstein. Your question
2 would IDOT accept a certain --

3 MR. GOLDSTEIN: If, in fact --

4 MR. FELDER: Could I suggest could we go off the
5 record for a second.

6 MR. GOLDSTEIN: Sure.

7 JUDGE RILEY: Okay. I say yes.

8 (Off the record.)

9 Back on the record.

10 I guess my next question,
11 Mr. Goldstein, is what can the witness add to that?
12 Would he know --

13 MR. GOLDSTEIN: I forgot the question to be
14 honest. I'm sorry.

15 JUDGE RILEY: Pat, can you find it.

16 (Question read by
17 reporter.)

18 Can you answer that question?

19 THE WITNESS: Not very responsibly.

20 MR. GOLDSTEIN: That's fine. Then I have nothing
21 else.

22 JUDGE RILEY: And thank you, Mr. Klyce. Nothing

1 further?

2 MR. FELDER: I have no further witnesses. I
3 would offer Exhibits 1 and 2 into evidence.

4 JUDGE RILEY: All right. Can I get the stamped
5 copy of those over there and I'll give you the
6 unstamped copy back here. That should be yours.

7 MR. GOLDSTEIN: Is this one mine?

8 JUDGE RILEY: No, that's the stamped one.

9 MR. FELDER: This is stamped.

10 JUDGE RILEY: Okay.

11 MR. GOLDSTEIN: Do you have an extra copy of the
12 letting -- not the letting -- the schedule?

13 JUDGE RILEY: Yes.

14 (Document tendered.)

15 Gentlemen, do you want to submit briefs
16 in this matter? Closing briefs?

17 MR. FELDER: When we were here last, I was asking
18 to proceed sooner rather than later. I did indicate
19 that I was going to be bringing in a proposed order
20 today in anticipation of the fact that there wasn't
21 an objection to the take or the amount, and I would
22 like to submit that now, and I will give a copy to

1 counsel. If he wants to submit a proposed order in
2 response, he can. If we can work out an order, I
3 will let you know.

4 MR. GOLDSTEIN: I would like to -- are we off the
5 record?

6 JUDGE RILEY: No.

7 MR. GOLDSTEIN: On the record either way. I was
8 aware that Mr. Felder was going to provide a
9 proposed order to your Honor this afternoon. I
10 would like to file exceptions to the order rather
11 than go through the briefing schedule to save some
12 time for Mr. Felder.

13 JUDGE RILEY: So long as it clarifies the issues
14 for me, that's the main thing.

15 MR. GOLDSTEIN: Let me also state that for the
16 purposes of the hearing this afternoon I'm going to
17 ask that the lease in agreement be brought into
18 evidence as Com Ed Exhibit 1 and I'm going to make
19 an offer of proof --

20 JUDGE RILEY: Okay. Let's --

21 MR. GOLDSTEIN: -- then I'm done.

22 JUDGE RILEY: Let's deal with the exhibits first.

1 Let's go with IDOT's Petitioner's Exhibit 1 again.
2 How would you title that?
3 MR. FELDER: A plat of highways.
4 JUDGE RILEY: A plat of highways.
5 MR. GOLDSTEIN: There's no objection to that.
6 JUDGE RILEY: Okay. He has not objected to the
7 motion you have yet to make for admission. So I
8 take it you are moving for the admission of
9 Petitioner's Exhibit 1 into evidence?
10 MR. FELDER: 1 and 2.
11 JUDGE RILEY: What is the title of No. 2?
12 MR. FELDER: Two is the Highway Improvement
13 Program.
14 JUDGE RILEY: And any objection to Exhibit 2?
15 MR. GOLDSTEIN: No objection.
16 JUDGE RILEY: Then Petitioner's Exhibits 1 and 2
17 are admitted into evidence.
18 (Whereupon, Petitioner's
19 Exhibit Nos. 1 & 2 were
20 received in evidence.)
21 And, Mr. Goldstein, you had a document,
22 Respondent's Exhibit 1, titled "Permanent Easement."

1 MR. GOLDSTEIN: Right, Judge. I move that into
2 evidence.

3 JUDGE RILEY: Any objection?

4 MR. FELDER: Yes, foundation. And I don't think
5 there was foundation as to its execution or that it
6 was in a form that was acceptable to the department.

7 MR. GOLDSTEIN: If, in fact, Judge, that
8 permanent easement is not acceptable to IDOT, then
9 that casts a wholly different light on this
10 proceeding.

11 I believe that Mr. Klyce testified that
12 there was an agreement as to the easement and as to
13 the purchase price, and that is essentially what is
14 contained in Com Ed Exhibit 1, which is the actual
15 permanent easement executed by the company. There
16 is no execution by IDOT on that document.

17 If, in fact, they are not going to
18 execute that document, I think we ought to know
19 about it immediately today. I guess it casts a
20 totally different light on this entire proceeding,
21 and I would ask that briefs be filed.

22 JUDGE RILEY: When you say IDOT is not going to

1 execute the document --

2 MR. GOLDSTEIN: I don't know. Mr. Felder's made
3 some comments with respect to the form of the
4 document, its acceptability to IDOT. This is a
5 document that was executed months ago and was
6 provided to IDOT months ago, and, as far as I'm
7 aware, there's been no objection to that particular
8 document.

9 If there is an objection, then this is
10 a wholly different proceeding, Judge, and I would
11 like the opportunity to file briefs and take
12 exception to Mr. Felder's proposed order.

13 This is very serious. Then there is no
14 agreement on the purchase price, and there's
15 nothing, then we are at square one instead of at
16 square five.

17 JUDGE RILEY: Mr. Felder, anything? Anything
18 further?

19 MR. FELDER: Yes. I don't know if this document
20 in its form was acceptable to the department or not.
21 I do know that it refers to a master agreement that
22 was the product of a negotiation between

1 Commonwealth Edison and the department several
2 years. It's a master agreement that was recorded in
3 the recorder of deeds in Cook County and it dealt
4 with issues that were common to all acquisitions or
5 believed to be common to all acquisitions between --
6 that the department would seek from Com Ed.

7 I do understand that the master
8 agreement is an agreement to which there is no
9 objection. And as it relates to the department's
10 position, I don't think this document has been
11 tendered as Respondent's Exhibit 1 requires a
12 signature from the department since it refers to the
13 master agreement that's already in existence.

14 And my objection was simply
15 foundational, your Honor, that a foundation had not
16 been laid for the admission of this document.

17 JUDGE RILEY: Mr. Goldstein, you mentioned
18 something about an offer of proof.

19 MR. GOLDSTEIN: Yes. But, in addition to that,
20 Judge, and in response to Mr. Felder, I believe that
21 I did ask Mr. Klyce about this document and that he
22 was aware of it. I think that's sufficient

1 foundation for his purpose.

2 JUDGE RILEY: But we don't know who prepared the
3 document. We don't know when it was prepared.

4 MR. GOLDSTEIN: Definitely an IDOT document.

5 MR. FELDER: I don't know that that's necessarily
6 the case. I mean, I don't know, because these
7 documents are created with input from the utilities
8 or the railroads and the department.

9 JUDGE RILEY: I don't understand how it could be
10 an IDOT document when it says Commonwealth Edison
11 Company owner and down here it's signed.

12 MR. GOLDSTEIN: By Com Ed.

13 JUDGE RILEY: Commonwealth Edison.

14 MR. GOLDSTEIN: It could be a Commonwealth Edison
15 document. I'm not sure myself.

16 JUDGE RILEY: Although I will say down at the
17 bottom of Page 2 it says "This instrument was
18 prepared by and returned to Illinois Department of
19 Transportation."

20 MR. GOLDSTEIN: I thought that the document was
21 initially prepared by IDOT, but I'm not certain of
22 that. I certainly have no proof of that.

1 I guess what is next is a ruling on the
2 document, Judge.

3 JUDGE RILEY: A ruling on whether or not it's
4 admissible.

5 Mr. Goldstein, I will have to sustain
6 the objection. There is a lack of foundation here.
7 There's no one to testify who prepared this
8 document, and under what circumstances, and for what
9 purpose.

10 MR. GOLDSTEIN: Then I would ask that I be
11 allowed to file a brief in this matter prior to you
12 issuing a proposed order, because this is extremely
13 serious, Judge.

14 If there is no agreement with respect
15 to this parcel as to the easement or the purchase
16 price, then IDOT and Com Ed ought to start
17 negotiating all over again.

18 JUDGE RILEY: I don't understand why this
19 obviates the purchase price on the agreement to the
20 taking itself.

21 MR. GOLDSTEIN: Everything is reflected in the
22 permanent easement, Judge. If they're not willing

1 to accept that document, then there's nothing --

2 there's nothing.

3 JUDGE RILEY: You are saying there's no

4 basis for --

5 MR. GOLDSTEIN: There's no basis for --

6 JUDGE RILEY: -- an agreement to the take or to

7 the purchase price?

8 MR. GOLDSTEIN: We might as well start all over.

9 That's fine.

10 MR. FELDER: I'm not saying that at all. I'm

11 just saying (A) he's offering it into evidence.

12 There's no foundation for it; (B) this witness

13 testified he didn't know -- he knew that the price

14 had been agreed upon or he understood it had been

15 agreed upon. That's my understanding as well. But

16 the content of that document -- he didn't have

17 knowledge as to whether the content of that document

18 as it relates -- there's more in there than just the

19 price. There are terms of an easement. He doesn't

20 know if those terms were all agreeable or not. That

21 would necessitate a condemnation action to acquire

22 the permanent easement interest that the department

1 needs.

2 I did make the statement there is a
3 reference to a master agreement to which my
4 understanding is IDOT has an agreement as it relates
5 to terms and conditions that might apply to the use
6 of easement premises granted by Commonwealth Edison.

7 MR. GOLDSTEIN: Let me make one further
8 statement, Judge. With all due respect to
9 Mr. Klyce, he did not take part in any of the
10 negotiations. I agree with that.

11 I think that what Mr. Felder has done
12 this afternoon is put on the wrong witness to this
13 proceeding.

14 If he has no witness that can testify
15 that there is any agreement between Com Ed and IDOT,
16 then we might as well start all over again.

17 JUDGE RILEY: Well, I'm going to standby my
18 original ruling in this objection, but I am also
19 going to require the parties to brief this matter,
20 submit closing briefs. I want to set a briefing
21 schedule.

22 MR. GOLDSTEIN: Let me make one more statement

1 for the record, if I may, Judge. Com Ed would make
2 this offer of proof by attorney.

3 We believe, in fact, that a permanent
4 easement has been agreed to and signed off by Com Ed
5 as indicated by your rejection of the permanent
6 easement document, Com Ed Exhibit 1.

7 Com Ed is willing to sign any and all
8 other documents, other than an Affidavit of Title.
9 Com Ed believes that it should not be required to
10 sign off on the Affidavit of Title and that there
11 are, in fact, due diligence and cost issues involved
12 in signing off on the Affidavit of Title, and that's
13 the basis for not signing off on that document.
14 That concludes my offer of proof.

15 JUDGE RILEY: Then we are back to a briefing
16 schedule.

17 MR. GOLDSTEIN: How much time? Seven days? Ten
18 days?

19 MR. FELDER: Well, I have a proposed order that I
20 would like to submit. If you want to submit a brief
21 with regard to the proposed order, is that what we
22 are discussing?

1 JUDGE RILEY: Well, it's not just the proposed
2 order. It's just a closing brief. I don't know if
3 a proposed order would suffice as far as spelling
4 out the issues and providing argument.

5 MR. FELDER: Could I have a moment with my
6 client?

7 JUDGE RILEY: Certainly.

8 (Off the record.)

9 Let's go back on the record. We have
10 had a brief recess. The parties have agreed at this
11 point to continue this matter for a few days, and I
12 believe we have come up with August -- excuse me --
13 October 25th. That's a Monday.

14 MR. GOLDSTEIN: Yes.

15 JUDGE RILEY: I don't have anything scheduled on
16 the 26th.

17 MR. FELDER: The 25th is fine.

18 JUDGE RILEY: 10 a.m.

19 MR. FELDER: That's fine.

20 JUDGE RILEY: All right. And, gentlemen, will
21 you waive notice?

22 MR. GOLDSTEIN: I waive notice.

1 MR. FELDER: Notice waived.

2 JUDGE RILEY: We are continued to Monday, October
3 25th, at 10 a.m., and we will see where we are at
4 that time and we'll keep the record open.

5 JUDGE RILEY: Thank you.

6 (Whereupon, the above
7 matter was adjourned, to
8 be continued to
9 October 25, 2010 at
10 10 o'clock a.m.)

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